



The Concept of “Special Considerations” Reconsidered in the Family Court

Special Contributions may not be so special after all.

The Family Court of Australia, in deciding property settlements between parties that have separated, looks at the financial and non-financial contributions each have made to the relationship in deciding how to divide the pool of assets that has been accumulated. The asset pool is normally divided on a percentage basis.

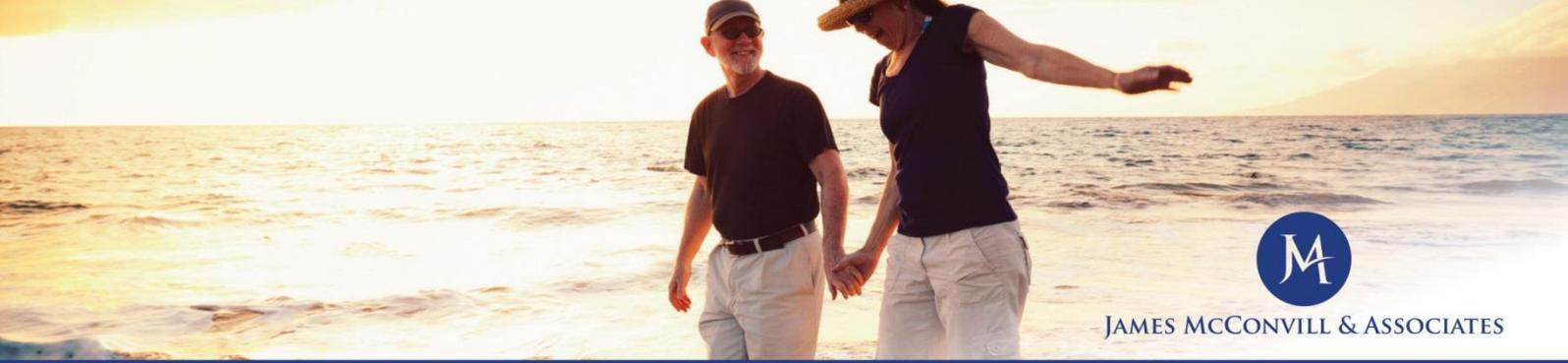
Over the last number of years the concept of “special contributions” has crept into the language of the Family Court in deciding some high worth and “big money cases” in property settlement decisions.

The term “special contributions” normally arises in situations where one party to the relationship argues that because they have made a “special” or an “exceptional” contribution to the relationship because of their special skills which resulted in a significant financial asset pool (for example creation of a successful business) then they should be entitled to a greater share of the property settlement.

However, there is no reference to the term ‘special skill’ or one party making ‘special’ contributions’ in the *Family Law Act 1975*.

The concept of “special contributions” is well illustrated in the case of *Whiteley & Whitely* (1992) FLC 92. In that decision the Family Court determined that the husband, Whitely, who was a famous artist, had “special skills” which enabled him to make a major contribution to the accumulation of assets in the marriage. As a result of the husband’s “special skill” in his contribution to the financial assets of the marriage he was awarded by the court 67.5% of the property settlement and his wife 32.5%.

Over the years there has been much debate about whether the concept of “special skills” should be given greater weight in a property settlement. Part of the controversy relates to the fact that “special skills” are only given weight for financial contributions and not for homemaking and parenting contributions.



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The debate about the validity of “special contributions” was revived again for example in the case of *Kane & Kane* [2013] FamCAFC 205. In that case the Full Court rejected the notion of “special skills” or “special contributions” saying that it would result in disproportionate weight being given to one party’s contributions although it was possible to find that one party had made greater contributions than the other.

In the most recent decision of *Fields & Smith* [2015] FamCAFC 57 the court considered whether the concept of “special skills” and “special contributions” was a binding rule within the Family Law Act and referred favourably to the decision in *Kane & Kane* in their judgement.

In that case the husband and wife had been married for 20 years. The significant asset pool was approximately \$30 – \$40 million and had been generated from a successful construction business. The husband argued that he had been the “driving force” in the success of the business and that because of his “special skill” in making the contributions he should be awarded a greater percentage of the asset pool.

However, the wife had also been directly involved in certain aspects of the business as both a director and shareholder. The wife otherwise, was the main homemaker and parent. There were three children of the relationship who were adults at the time of the original trial.

The Full Court bench including the Chief Justice determined that there was no binding rule of “special contributions” and adjusted the original proportion of the property settlement of the husband and wife from a division of 60% to the husband and 40% to the wife to a division of 50% to the husband and 50% to the wife.

As a result of this case it is arguable that the Family Court has shown it is increasingly less willing to give significant weight to the argument that “exceptional” financial contributions are more important than other contributions made in deciding the overall contributions made to the relationship by each party when deciding property settlements. In a sense “special contributions” may become less special in the years to come.